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GOVERNMENT OF THE PROVINCE OF ALBERTA

DOMESTIC RELATIONS ACT

CHAPTER D-37
REVISED STATUTES
OF ALBERTA
1980

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DOMESTIC RELATIONS ACT

CHAPTER D-37

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definition

1 In this Act, except in Part 7, "Court" means the Court of Queen's Bench.

RSA 1970 c113 s2;1978 c51 s38(14)(a)

PART 1

RESTITUTION OF CONJUGAL RIGHTS

Judgment for restitution of conjugal rights

2 If one party to a marriage refuses to cohabit with the other party, the Court may, in its discretion, give a judgment for restitution of conjugal rights.

RSA 1970 c113 s3

Judgment not enforced by attachment

3 No judgment for restitution of conjugal rights shall be enforced by attachment.

RSA 1970 c113 s4

Action for judicial separation

4 If the defendant fails to comply with a judgment of the Court for restitution of conjugal rights, the defendant shall thereupon be deemed to have been guilty of desertion without reasonable cause, and an action for judicial separation may be forthwith instituted and a judgment of judicial separation may be pronounced although the period of 2 years mentioned in section 6 has not elapsed since the failure to comply with the judgment for restitution of conjugal rights.

RSA 1970 c113 s5

PART 2

JUDICIAL SEPARATION

Definition

5 In this Part "matrimonial offence" means any of the offences mentioned in section 6.

RSA 1970 c113 s6

Grounds for judgment or judicial separation

6(1) A judgment of judicial separation may be obtained from the

Court by either spouse if the other spouse has since the celebration of marriage been guilty of

(a) adultery,

(b) cruelty,

(c) desertion

(i) for 2 years or upwards without reasonable cause, or

(ii) constituted by the fact of the other spouse having failed to comply with a judgment for restitution of conjugal rights,

or

(d) sodomy or bestiality, or an attempt to commit either of those offences.

(2) In this Act "cruelty" is not confined in its meaning to conduct that creates a danger to life, limb or health, but includes any course of conduct that in the opinion of the Court is grossly insulting and intolerable, or is of such a character that the person seeking the separation could not reasonably be expected to be willing to live with the other after the other has been guilty of that conduct.

RSA 1970 c113 s7

Jurisdiction of Court to hear actions

7 The Court has jurisdiction to hear an action for judicial separation or restitution of conjugal rights, or an application for alimony, when both the parties to the action

(a) are domiciled in Alberta at the time of the commencement of the action,

(b) had a matrimonial home in Alberta when their cohabitation ceased, or when the events occurred on which the claim for separation is based, or

(c) are resident in Alberta at the time of the commencement of the action.

RSA 1970 c113 s8

Where judgment of judicial separation not granted

8 No judgment of judicial separation shall be granted when it is made to appear at the hearing of the case that the plaintiff has

(a) in any case where judicial separation is sought on the ground of adultery, been accessory to or connived at the adultery of the other party,

(b) condoned the matrimonial offence complained of,

(c) presented or prosecuted the claim in collusion with the respondent, or

(d) during the existence of the marriage committed adultery that has not been condoned.

RSA 1970 c113 s9

Conduct conducing to adultery

9 A judgment of judicial separation may be refused when the claim has been presented on the grounds of adultery and it is made to appear at the hearing that the plaintiff has been guilty of conduct conducing to the adultery.

RSA 1970 c113 s10

Effect of judgment of judicial separation

10 After a judgment of judicial separation has been granted

(a) neither spouse is under any duty of cohabitation, and

(b) the wife shall, during the continuance of the separation, be considered as a femme sole for the purposes of contracts and wrongs and injuries and suing and being sued in a civil proceeding, and for all other purposes, and shall be reckoned as sui juris and as an independent person for all purposes, including the acquisition of a new domicile distinct from that of her husband.

RSA 1970 c113 s11

Property after judicial separation

11 If, after a judgment of judicial separation, a spouse dies intestate during the continuance of the separation, the property of the person so dying devolves as though that person had been predeceased by the survivor.

RSA 1970 c113 s12;1973 c61 s5(2)

Liability for spouse's actions

12 After a judgment of judicial separation and during the continuance of the separation, a spouse is not liable in respect of any engagement or contract the other spouse has entered or enters into, or for a wrongful act or omission by, or for any costs the other spouse incurs in any action.

RSA 1970 c113 s13;1973 c61 s5(3)

Damages arising from adultery

13 A married person, either by an action for judicial separation or by an action limited to the recovery of damages only, may recover damages from a person who has committed adultery with the married person's spouse, and the Court may direct in what manner the damages may be paid and applied, and may direct that the whole or a part thereof shall be settled for the benefit of the children, if any, of the marriage, or as provision for the maintenance of that spouse.

RSA 1970 c113 s14;1973 c61 s5(4)

Dismissal of action for damages

14(1) The Court shall dismiss an action under section 13 if it finds that

(a) the plaintiff during the marriage has been accessory to or has connived at the adultery complained of,

(b) the plaintiff has condoned the adultery complained of, or

(c) the action has been presented or prosecuted in collusion with the plaintiff's spouse.

(2) The Court may dismiss an action under section 13 if it finds that the plaintiff has been guilty of

(a) adultery during the marriage,

(b) unreasonable delay in presenting or prosecuting the action,

(c) cruelty toward the plaintiff's spouse,

(d) desertion or wilful separation from the plaintiff's spouse before the adultery complained of, or

(e) wilful neglect or misconduct that has conduced to the adultery.

RSA 1970 c113 s15;1973 c61 s5(5)

PART 3

ALIMONY AND MAINTENANCE

Alimony

15 The Court has jurisdiction to grant alimony to either spouse in an action limited to that object only in a case where the plaintiff would be entitled to a judgment of judicial separation or a judgment for restitution of conjugal rights.

RSA 1970 c113 s16;1973 c61 s5(6)

Interim order for alimony

16(1) When an application is made in an action for

(a) alimony,

(b) dissolution of marriage, or

(c) a declaration of nullity, judicial separation or restitution of conjugal rights,

an interim order for the payment of alimony to the plaintiff pendente lite may be made, and in the event of an appeal the alimony may be continued by a further interim order until the determination thereof.

(2) No interim order shall be made if the plaintiff has from any source whatsoever sufficient means of support independent of the defendant.

(3) The interim order may direct the payment of periodical sums of money, and the amount of the alimony directed is in the discretion of the Court.

(4) When an application is made in an action referred to in subsection (1), the Court may order from time to time the payment by the defendant of any sums the Court considers reasonable and proper on account of the necessary disbursements of the plaintiff of and inci-

dental to the action, at the time, in the manner and to the persons the Court considers proper.

RSA 1970 c113 s17;1973 c61 s5(7)

Alimony after judicial separation

17(1) When a judgment for judicial separation has been given, the Court may in an action for alimony order that the defendant pay to the plaintiff until further order, or during their joint lives or during a shorter period, a periodical sum as alimony.

(2) When a decree for restitution of conjugal rights has been granted, the Court may make a similar order, to take effect in the event of the decree not being complied with.

RSA 1970 c113 s18;1973 c61 s5(8)

Liability for necessaries

18 When an interim or other order for alimony is subsisting and the payment of alimony is not in arrears under that order the defendant is not liable for necessaries supplied to the plaintiff.

RSA 1970 c113 s19;1973 c61 s5(9)

Injunction re disposal of property

19 When an application for alimony is made, the Court may either before or after judgment, grant an injunction for a time and on any terms that are just to prevent any apprehended disposition by the defendant of the defendant's real or personal property.

RSA 1970 c113 s20;1973 c61 s5(10)

Registration of order for alimony, etc.

20 An order or judgment for alimony, whether interim or otherwise, may be registered in any land titles office, and the registration so long as the order or judgment remains in force,

(a) binds the estate and interest of every description that the defendant has in any land in the land registration district where the registration is made, and

(b) operates thereon in the same manner and with the same effect as a registration of a charge by the defendant of a life annuity on the defendant's land.

RSA 1970 c113 s21;1973 c61 s5(11)

Settlement of property

21 When a married person has obtained a judgment of judicial separation or a decree of divorce for adultery of that person's spouse, the Court may order a settlement that it thinks reasonable of any property to which that spouse is entitled in possession or reversion for the benefit of the innocent party and of the children of the marriage, or either or any of them.

RSA 1970 c113 s22;1973 c61 s5(12)

Payments after divorce or nullity

22(1) When a decree of divorce or declaration of nullity of marriage has been obtained, the Court may order that either party, to the satisfaction of the Court, secure to the other party an annual sum of money for any term not exceeding the lifetime of the other party that the Court considers reasonable having regard to the fortune, if any, of that other party, the ability to pay of the party against whom the order is made, and the conduct of both parties.

(2) If it thinks fit, the Court may in addition to or in the alternative order that one of the parties pay to the other during their joint lives a monthly or weekly sum for the other party's maintenance and support, that the Court thinks reasonable.

(3) On a decree of divorce, an order may be made in favour of either party, notwithstanding that the party has been guilty of adultery.

RSA 1970 c113 s23;1973 c61 s5(13)

Disposition of property

23 When a decree absolute of divorce or declaration of nullity of marriage is given, the Court may make any order that to the Court seems fit with regard to the property comprised in an ante-nuptial or post-nuptial settlement made on the parties to the marriage and with regard to the application of the property either for the benefit of the children of the marriage or of the parties to the marriage or both.

RSA 1970 c113 s24

Restitution of conjugal rights

24 When a judgment for restitution of conjugal rights is given, and the defendant is entitled to property, or is in receipt of any profits of trade or earnings, the Court may order

(a) that a settlement be made of the property for the benefit of the plaintiff and the children of the marriage or any of them, or

(b) that part of the profit of trade or earnings be periodically paid to the plaintiff for the plaintiff's own benefit, or to the plaintiff or another person for the benefit of the children of the marriage or either or any of them.

RSA 1970 c113 s25;1973 c61 s5(14)

Variation of order for alimony or maintenance

25 In a case in which an order has been made for the payment of alimony, or for the payment of maintenance in an action for alimony, divorce, judicial separation, a declaration of nullity or restitution of conjugal rights, on it being made to appear

(a) that the means of either spouse have increased or decreased, or

(b) that either spouse has been guilty of misconduct or, being divorced, has married again,

the Court may from time to time vary or modify the order either by altering the times of payment or by increasing or decreasing the amount, or may temporarily suspend the order as to the whole or any part of the money so ordered to be paid and may again revive the order wholly or in part, as the Court thinks fit.

RSA 1970 c113 s26;1973 c61 s5(15)

PART 4

PROTECTION ORDERS

Enforcement

26 This Part applies to judgments or orders for the payment of maintenance or alimony or both

(a) of the Court under the *Divorce Act* (Canada), this Act or any other Act;

(b) of a provincial judge.

1977 c64 s3;1978 c51 s29

Desertion

27(1) A married person is deemed to have been deserted within the meaning of this Part when he is, in fact

(a) deserted by his spouse, or

(b) living apart from his spouse,

whether on account of cruelty on the part of the spouse or on account of the refusal or neglect by the spouse without sufficient cause to supply him with food and other necessaries when able to do so.

(2) A married person deserted by his spouse may apply, by an affidavit setting forth facts material to the application, to a justice of the peace who, on being satisfied that the spouse has neglected or refused without sufficient cause to provide reasonable maintenance for the applicant or the applicant and their children, and has deserted him, may summons the spouse to appear before a provincial judge.

(3) On the spouse appearing before a provincial judge, the judge shall ask the spouse whether or not he accepts liability for the maintenance of the applicant or the applicant and their children, as the case may be, according to the application.

(4) If the spouse admits liability, or if the spouse denies liability and the judge after due hearing finds the spouse does have liability, the judge may order that the spouse pay to the applicant personally, or for his use to a 3rd person on his behalf and named in the order, a weekly, semi-monthly or monthly sum for the maintenance of the applicant or the applicant and their children, that the judge considers reasonable having regard to the means of both the spouses.

(5) When a married person has not been deserted by his spouse and has their children in his care, he may apply to a provincial judge for an order for maintenance restricted to the maintenance of the children, and the application may be dealt with in every other respect as an application under subsection (2).

(6) When a married person makes an application for himself and his children under subsection (2) and it is held that he is not a deserted

spouse, the judge may make an order for maintenance restricted to the maintenance of the children.

(7) When a divorced person has in his care or custody legitimate children of himself and his divorced spouse and there is no order of a court or judge for maintenance of the children, he may apply to a provincial judge for an order for maintenance restricted to the maintenance of the children and the application may be dealt with in every respect as an application under subsection (2).

(8) When an application is made under this section, the parties to the application shall provide the provincial judge with any financial information and records that the judge considers necessary.

(9) A party to proceedings under this section who is aggrieved by an order or refusal to make an order pursuant to this section may appeal to the Court and the provisions of Part XXIV of the *Criminal Code* (Canada) apply, with all necessary modifications, with respect to the appeal.

(10) Notwithstanding subsection (9), the Court, by order

(a) may, if service cannot be effected on the provincial judge who made the order or refusal, direct that service be made on some other person in place of the provincial judge,

(b) may, if service cannot be effected on the opposite party, make any order for substituted or other service or for substitution for service of the notice by letter, public advertisement or otherwise that appears just, or may dispense with service, and

(c) may fix, before or after the expiration of the period prescribed for service by subsection (9), a further period not exceeding 20 days within which any service required to be made pursuant to subsection (9) or this subsection may be effected.

(11) Immediately on receipt of the notice served pursuant to subsection (9) or (10) the provincial judge or other person served in his stead shall forward it, together with the document containing the order or refusal, all other documents relating thereto, and the notes or a transcript of the evidence taken at the hearing, to the clerk of the Court for the judicial district within which the application was made.

(12) When subsection (11) has been complied with the clerk shall notify the Court, which shall fix a place and a time that is not sooner than 14 days from the date it was so notified, for the hearing of the appeal.

(13) The clerk shall send by registered mail a notice of the time and place of the appeal to all parties to the appeal at least 10 days before the date fixed for the hearing.

(14) The Court may adjourn the hearing of the appeal from time to

time, and from one place to another, and may fix a new time and place and give directions to the clerk relating to notices to be given to the parties as the Court thinks fit.

(15) The Court in determining an appeal may

(a) set aside, confirm or vary an order made by the provincial judge, or make any other order mentioned in this section and warranted by the evidence, and

(b) make any order it considers appropriate relating to the costs of the appeal and the amount of them.

(16) An order made under subsection (15)

(a) shall be transmitted by the clerk to the provincial judge together with the papers and documents transmitted by him, and

(b) is enforceable in the same manner as if the order had been originally made by the provincial judge.

RSA 1970 c61 s27;1977 c64 ss2,4
1978 c51 s38(14)(b)

Summons

28(1) When a person against whom an order has been made for payment of maintenance or alimony under this or any other Act has not paid any or all of the money payable under the order, the person to whom the money is payable may apply for the issue of a summons from a clerk of the Provincial Court.

(2) The summons may be served either personally or in a manner the provincial judge may in writing direct, and shall

(a) require the respondent to attend at the time and place mentioned in it, to show cause why the order should not be enforced as hereinafter provided, and

(b) be returnable on a date which shall be at least 10 days after the service of it.

(3) The applicant and all witnesses whom the court thinks proper may be examined on oath touching the inquiries to be made on the return of the summons.

(4) If the respondent having been duly served does not attend as required by the summons, or does not show sufficient reason for his non-attendance, or does not satisfy the provincial judge that he is unable to pay the money required to be paid by the order for maintenance or alimony the judge may enforce the order in any or all of the following ways:

(a) by any of the means provided by Part XXIV of the *Criminal Code* (Canada) for the enforcement of an order by a justice for the payment of a fine or penalty;

(b) by fixing the amount of arrears of maintenance or alimony for which the respondent is liable;

(c) by varying either or both of

(i) the amount of arrears of maintenance, or

(ii) the amount of maintenance or alimony

payable under an order that is not an order of the Court;

(d) by making an order under section 29;

(e) by making an order under section 30.

(5) The provincial judge may from time to time vary the order on the application of either the husband or the wife on proof that the means of the husband or the wife have altered in amount since the making of the original order or a subsequent order varying it.

(6) When an application is made under this section, the parties shall provide the judge with any financial information and records the judge considers necessary.

RSA 1970 c113 s28;1977 c64 ss2,5
1978 c51 s28

Attachment of salary

29(1) When a respondent is in receipt of or is entitled to receive a salary, wages or other remuneration from an employer or any other person engaging the respondent's services, the judge may make an order directing the payment to a clerk of the Provincial Court at a place specified in the order of that part of the salary, wages or other remuneration specified in the order.

(2) The part of the salary, wages or other remuneration specified in an order made under subsection (1) may include an amount to be applied to reduce any arrears fixed by the judge under section 28(4)(b) or (c).

(3) An order under subsection (1) shall be directed to the respondent and the employer or other person engaging the respondent's services and shall be expressed to continue for such time as the judge may fix or until further order by a provincial judge.

(4) An order under subsection (1) shall be served on the employer or person engaging the respondent's services and when served is binding on him.

(5) The employer or other person engaging the respondent's services shall on being served with the order notify the respondent forthwith.

(6) If the employer or the person engaging the respondent's services has more than one office and it appears that the salary, wages or other remuneration is or may be payable through some other office than that at which the order is served, the person in charge of the

office at which the order is served shall forthwith notify the person in charge of the office at which the money is or may be payable and that money is deemed to be attached and the order is deemed to be served as of the time the notice of the order is actually received at the office through which the money is payable or within 48 hours after the actual service of the order, whichever is the shorter period.

(7) Service of the order on any member of a partnership, at its usual place of business in Alberta or on an authorized agent of the partnership, is sufficient for the purposes of this Part.

(8) An employer or person engaging a respondent's services shall not terminate the respondent's employment or services by reason only that the employer or person engaging the respondent's services has been served with an order under this Part.

(9) No employer or person engaging a respondent's services shall be compelled to pay salary, wages or other remuneration or any part thereof otherwise than in accordance with the terms of the hiring.

(10) A person who is served with an order under this section and who fails to comply with the terms of the order without reasonable justification is guilty of an offence and liable to a fine of not more than $1000.

1977 c64 s6

Order deemed writ of execution

30(1) A provincial judge may make an order permitting a spouse or former spouse in whose favour an order for maintenance or alimony has been made to file the order for maintenance or alimony with a sheriff of the Court.

(2) When an order is filed with a sheriff under subsection (1), the order is deemed to be a writ of execution for the amount that the payment ordered is in arrears from time to time.

(3) A certificate of a clerk of the Provincial Court stating the amount that the payment ordered is in arrears shall be filed at the same time as an order under subsection (1).

(4) A further certificate of a clerk of the Provincial Court stating the amount that the payment ordered is in arrears may be filed from time to time and when filed the order filed under subsection (1) is deemed to be for the total amount of arrears certified.

(5) A certificate of a clerk of the Provincial Court is deemed to be a renewal of the writ of execution for all purposes.

(6) Notwithstanding any other Act, an order for maintenance or alimony filed under this section takes priority over any other writ of execution for an amount equal to the total maintenance or alimony payable for the latest 3-month period pursuant to the order.

(7) Notwithstanding subsection (6), this section does not affect a

claim under section 16 of the *Execution Creditors Act* or under section 52 of the *Labour Act*.

(8) When an order for maintenance or alimony filed under this section is varied by a judge pursuant to this or any other Act, the variation order may be filed with the sheriff of the Court and any subsequent certificate filed under subsection (4) shall be in accordance with the amount in arrears under the order as varied.

1977 c64 s6;1978 c51 s28

Attachment of a debt

31(1) In this section "debtor" means a person who is indebted to or liable to pay money to a spouse or former spouse who is required to pay maintenance or alimony by order of a court or judge.

(2) On the application of a person in whose favour an order for maintenance or alimony has been made a provincial judge may order that all debts, obligations and liabilities (other than wages or salary) payable or accruing due from a named debtor be paid by the debtor to a clerk of the Provincial Court at a place specified in the order.

(3) An application may be made under this section ex parte.

(4) An order made under this section shall relate only to the amount of arrears of maintenance or alimony for which the respondent is liable.

(5) Before a judge makes an order under subsection (2) he shall be satisfied

(a) that the person ordered to pay maintenance or alimony to the applicant has not made the payments required to be made under the order,

(b) that there is a debtor in Alberta, and

(c) that there is a reasonable possibility that the applicant will be unable to collect all or part of his claim or be subjected to unreasonable delay in the collection of his claim unless an order is granted under this section.

(6) An order made under subsection (2) shall be served on the debtor named in the order and service of the order binds the debt due or accruing due from the debtor or so much of it as is necessary to satisfy the claim of the applicant and any costs fixed in the order by the judge.

(7) A copy of the order shall be served on the respondent not later than 20 days after payment by the debtor to the clerk of the Provincial Court.

(8) If the debtor has more than one office and it appears that money alleged to be due to the person ordered to pay maintenance or alimony is or may be payable through some other office of the debtor than that at which the order is served, the person in charge of the office

at which the order is served shall forthwith notify the person in charge of the office at which money is or may be payable and that money is deemed to be attached and the order is deemed to be served as of the the time the notice of the order is actually received at the office through which that money is payable or within 48 hours after the actual service of the order, whichever is the shorter period.

(9) Debts owing by a partnership carrying on business in Alberta may be attached under this section although one or more members of the partnership are resident out of Alberta, if the order is served in Alberta on any person having the control or management of the partnership or any partner.

(10) An answer disputing liability in the name of the partnership is sufficient to identify the partnership.

(11) Within 10 days after service of the order on the debtor, the debtor shall either

(a) pay to the clerk of the Provincial Court the lesser of

(i) the money due from him to the person ordered to pay maintenance or alimony, and

(ii) an amount sufficient to satisfy the order and any costs fixed in the order by the judge,

(b) file an answer in the office of the clerk of the Provincial Court stating that the money is accruing due but is not yet payable and that it is to be payable at a specified future date or on the happening of a specified event,

(c) file an answer in the office of the clerk of the Provincial Court disputing his liability to the person ordered to pay maintenance or alimony, or

(d) file an answer in the office of the clerk of the Provincial Court that the debt attached belongs or may belong to some 3rd person whose name and address so far as is known to the debtor shall be stated.

(12) When the debtor files an answer under subsection (11)(b) then, on the specified future date or the happening of the specified future event, the debtor shall pay to the clerk of the Provincial Court the money accrued due at the time of service of the order from him to the person ordered to pay maintenance or alimony or an amount sufficient to satisfy the order and any costs fixed by the judge, whichever is the lesser sum.

(13) When the debtor files an answer under subsection (11)(c), the debtor shall state the grounds on which the liability is disputed.

(14) When the debtor files an answer under subsection (11)(d) then, unless the judge otherwise orders, the debtor shall pay to the clerk

of the Provincial Court, with the answer, the debt attached or as much of the debt as is required to satisfy the order and any costs fixed by the judge, whichever is the lesser sum, and shall state the circumstances and grounds so far as they are within his knowledge.

(15) If a debtor

(a) does not pay the clerk of the Provincial Court,

(b) files an answer under subsection (11)(c) or (d), or

(c) does not pay the clerk of the Provincial Court and does not file an answer under subsection (11)(c) or (d),

the clerk shall forthwith notify the applicant.

(16) When the applicant is notified by the clerk of the Provincial Court under subsection (15), he may apply by notice of motion to the Court of Queen's Bench in the judicial district in which the Provincial Court is located for an order under subsection (19).

(17) The notice of motion shall be served on the clerk of the Provincial Court that issued the original attachment order, the respondent, the debtor and any other person claiming to be interested in the money attached not less than 15 days before the date on which the application is to be heard.

(18) On being served with the notice of motion under subsection (17) the clerk of the Provincial Court shall forthwith forward to the clerk of the Court of Queen's Bench

(a) the order made under subsection (2),

(b) the answer, if any,

(c) all depositions and transcripts of the evidence taken at the hearing, and

(d) all documents and exhibits filed at the hearing.

(19) On hearing the motion the Court of Queen's Bench may

(a) summarily determine any question arising in the attachment proceedings,

(b) direct the trial of an issue to determine any question arising in the attachment proceedings, or

(c) make any other order that is just.

(20) On payment to the clerk of the Provincial Court by the debtor, the clerk shall forthwith notify the applicant and the respondent of the amount of the payment.

(21) Where payment is made to the clerk of the Court of Queen's Bench pursuant to an order made under subsection (19), the clerk shall forthwith pay the money to the clerk of the Provincial Court that issued the original attachment order.

(22) Payment by the debtor to the clerk of the Provincial Court is a valid discharge to him against the respondent to the extent of the payment.

1977 c64 s6;1978 c51 s28

Crown bound

32 An order made under this Part is binding on the Crown.

1977 c64 s6

Money paid to applicant by order

33 Money paid to a clerk of the Provincial Court pursuant to an order made under this Part may be paid to the person entitled to the money by order of a provincial judge on application made ex parte or on such notice as may be directed.

1977 c64 s6

Money not attachable

34 Money paid to a clerk of the Provincial Court pursuant to an order made under this Part is not attachable.

1974 c64 s6

Payment on adjournment of hearing

35 On an application by a person ordered to pay maintenance or alimony to his spouse for an adjournment of a hearing, the provincial judge may, as a condition of granting the adjournment, order that person to pay to his spouse any sum that the provincial judge considers proper, if any, during the period of the adjournment.

1977 c64 s6

Hearing in private

36(1) In the discretion of the provincial judge cases arising under this Part may be heard in private.

(2) The provincial judge may

(a) rehear the application at the instance of the person ordered to pay after notice to the other spouse, and

(b) on the rehearing confirm, rescind or vary an order as the provincial judge considers just.

RSA 1970 c113 s30;1977 c64 s2

Registration of order

37(1) An order for maintenance or alimony may be registered in any land titles office and the registration, so long as the order remains in force,

(a) binds the estate and interest of every description that the person ordered to pay maintenance or alimony has in any land in the land registration district where the registration is made, and

(b) operates on those estates or interests in the same manner and with the same effect as a registration of a charge by the person

ordered to pay maintenance or alimony of a life annuity on the land of that person.

(2) The person against whose land an order is registered under subsection (1) may apply to the Court for an order directing the Registrar of Land Titles to cancel the registration of the order under subsection (1).

(3) The Court may make an order directing the Registrar of Titles to cancel the registration of an order under subsection (1) against part or all of the estates and interests of the person ordered to pay maintenance or alimony and under any terms and conditions the Court considers necessary.

1977 c64 s8:1978 c51 s28

Application of Criminal Code

38(1) Except as is otherwise provided by this or any other Act, and except to the extent that they are contrary to the intent of this Part, Parts XXIII and XXIV of the *Criminal Code* (Canada) apply to proceedings under this Part.

(2) Nothing in this Part shall be construed to prejudice, abridge, curtail, defeat or otherwise affect a civil or other remedy at law of a married person against her or his spouse that she or he would otherwise have but for this Part.

RSA 1970 c113 s31:1972 c89 s6

Regulations

39 The Lieutenant Governor in Council may make regulations

(a) prescribing rules with respect to the making of applications under this Part and dealing generally with all matters of procedure under this Part;

(b) prescribing forms and providing for their use.

1977 c64 s9

PART 5

LOSS OF CONSORTIUM

Inducing spouse to leave

40 A person who, without lawful excuse, knowingly and wilfully persuades or procures a married person to leave that married person's spouse against the will of that married person, whereby the married person is deprived of the society and comfort of that spouse, is liable to an action for damages by that married person.

1973 c61 s5(16)

Harbouring of spouse

41 A married person also has a right of action for damages against a person who, without lawful excuse, knowingly receives, harbours and detains the spouse of the married person against the will of the married person.

1973 c61 s5(16)

When harbouring not actionable

42 No action lies under section 41 if

(a) the plaintiff and the plaintiff's spouse were living apart by agreement, or were judicially separated, when the act of the defendant took place,

(b) the plaintiff has been guilty of cruelty to his or her spouse, and the defendant harbours the plaintiff's spouse from motives of humanity, or

(c) the defendant has reasonable grounds for supposing that the plaintiff has been guilty of cruelty to his or her spouse, and harbours the spouse from motives of humanity.

1973 c61 s5(16)

Loss of consortium through jury

43(1) When a person has, either intentionally or by neglect of some duty existing independently of contract, inflicted physical harm on a married person and thereby deprived the spouse of that married person of the society and comfort of that married person, the person who inflicted the physical harm is liable to an action for damages by the married person in respect of the deprivation.

(2) The right of a married person to bring the action referred to in subsection (1) is in addition to, and independent of, any right of action that the spouse has, or any action that the married person in the name of the spouse has, for injury inflicted on the spouse.

1973 c61 s5(16)

PART 6

JACTITATION OF MARRIAGE

Action of jactitation of marriage

44(1) If a person persistently and falsely alleges that he is married to another person, that other person in an action of jactitation of marriage may obtain a judgment forbidding the making of the allegations.

(2) No such judgment shall be granted in favour of a person who has at any time acquiesced in the making of the allegations.

RSA 1970 c113 s36

PART 7

GUARDIANSHIP AND CUSTODY OF MINORS

Definition

45 In this Part "Court" means the Court of Queen's Bench, or a judge of the Surrogate Court sitting in chambers.

RSA 1970 c113 s37;1978 c51 s38(14)(c)

Guardianship

Powers of guardian

46 Except where the authority of a guardian appointed or constituted by virtue of this Act is otherwise limited, each guardian during the continuance of his guardianship

(a) may act for and on behalf of the minor,

(b) may appear in court and prosecute or defend an action or proceedings in the name of the minor,

(c) after furnishing any security the Court requires under section 51, has the care and management of the estate of the minor, whether real or personal, and may receive any money due and payable to the minor and give a release in respect of it, and

(d) has the custody of the person of the minor and the care of his education.

RSA 1970 c113 s52(2)

Guardians

47 Unless otherwise ordered by the Court the father and mother of a minor are the joint guardians of the minor, and the mother of an illegitimate minor is the sole guardian of the illegitimate minor.

RSA 1970 c113 s39

Appointment of guardian

48(1) A parent of a minor may by deed or will appoint a person to be guardian of the person and estate, or either, of the minor after the death of that parent.

(2) The person appointed guardian of a minor shall act jointly with the other parent or with the guardian appointed by the other parent.

RSA 1970 c113 s40

Court may appoint guardian

49 The Court may from time to time appoint a guardian of the person and estate, or either, of a minor to act jointly with the father or mother of the minor or with the guardian appointed by the deceased father or mother of the minor.

RSA 1970 c113 s41

Application of minor

50 If on the application of a minor, or of anyone on behalf of the minor, it appears

(a) that the minor has no parent or lawful guardian, or

(b) that the parent or lawful guardian is not a fit and proper person to have the guardianship of the minor,

the Court may appoint a guardian or guardians of the person and estate, or either, of the minor.

RSA 1970 c113 s42

Security by guardian

51 Unless otherwise ordered by the Court, each guardian of the estate of a minor except when the guardian is the Public Trustee shall furnish the security, if any, ordered by the Court.

RSA 1970 c113 s52(1)

Removal of guardians

52(1) Testamentary guardians and guardians appointed by order or letters of guardianship are removable by the Court for the same causes for which trustees are removable.

(2) A guardian referred to in subsection (1) by leave of the Court may resign his office on any terms and conditions the Court considers just.

RSA 1970 c113 s43

Guardianship in socage

53 Guardianship in socage, by nature and for nurture is abolished.

RSA 1970 c113 s38

Custody

Custody of children

54(1) The Court pronouncing

(a) a judgment for judicial separation, or

(b) a decree of divorce, either nisi or absolute,

may thereby declare the parent by reason of whose misconduct the decree is made to be a person unfit to have the custody of the minor children, if any, of the marriage.

(2) The parent declared to be unfit to have the custody of the minor children of the marriage is not entitled as of right to the custody or guardianship of those children on the death of the other parent.

(3) The Court may at any time revoke the declaration referred to in subsection (1).

RSA 1970 c113 s44

Agreement re custody of children

55(1) When parents

(a) are not living together, or

(b) are divorced or judicially separated,

they may enter into a written agreement with regard to which parent will have the custody, control and education of the minor children of the marriage.

(2) If the parents fail to reach agreement on the matters mentioned in subsection (1), either parent may apply to the Court for its decision.

RSA 1970 c113 s45

Order for right of access of parent

56(1) On the application of

(a) the father or mother of a minor, or

(b) a minor, who may apply without a next friend,

the Court may make any order it sees fit regarding the custody of the minor and the right of access to the minor of either parent.

(2) In making an order under subsection (1), the Court shall have regard

(a) to the welfare of the minor,

(b) to the conduct of the parents, and

(c) to the wishes as well of the mother as of the father.

(3) The Court may alter, vary or discharge the order on the application of either parent, or after the death of either parent on the application of a guardian appointed under this Part.

(4) The Court may in each case referred to in subsection (1) make any order respecting costs the Court considers just.

(5) The Court may also make an order for the maintenance of the minor by payment by the father or by the mother, or out of an estate to which the minor is entitled, of any sum from time to time that the Court considers reasonable, having regard to the pecuniary circumstances of the father or of the mother, or to the value of the estate to which the minor is entitled.

RSA 1970 c113 s46;1973 c61 s5(17)

Dismissal of order for production or custody of child

57(1) A person legally liable to maintain a minor or entitled to the custody of a minor is hereinafter called an "other responsible person".

(2) If on an application made by a parent or other responsible person for an order for the production or custody of a minor the Court is of the opinion that the parent or other responsible person

(a) has abandoned or deserted the minor, or

(b) has otherwise so conducted himself that the Court should refuse to enforce his right to the custody of the minor,

the Court may, in its discretion, decline to make the order applied for.

RSA 1970 c113 s47

Order for payment of expenses

58 The Court may in its discretion

(a) if at the time of the application for the production of a minor, the minor is being brought up by another person or by a school or institution, and

(b) if the Court orders the minor to be given up to the parent or other responsible person,

further order that the parent or other responsible person pay to the person, school or institution bringing up the minor the whole of the cost properly incurred in bringing up the minor, or any portion of it that seems to the Court to be just and reasonable having regard to all the circumstances of the case.

RSA 1970 c113 s48

Refusal to make order

59 When a parent or other responsible person has

(a) abandoned or deserted his minor, or

(b) allowed his minor to be brought up by another person or by a school or institution at the expense of that other person or at the expense of the institution for such a length of time and under such circumstances as to satisfy the Court that the parent or other responsible person was unmindful of his parental duties,

the Court shall not make an order for the delivery of the minor to the parent or other responsible person unless the Court is satisfied that an order for the delivery of the minor would be for the welfare of the minor.

RSA 1970 c113 s49

Religion

60(1) If on an application by a parent or other responsible person for the production or custody of a minor, the Court is of the opinion

(a) that that parent or other responsible person ought not to have the custody of the minor, and

(b) that the minor is being brought up in a different religion from that in which the parent or other responsible person has a legal right to require that the minor should be brought up,

the Court may make any order it thinks fit to ensure that the minor is brought up in the religion in which the parent or other responsible person has a legal right to require that the minor be brought up.

(2) Nothing in this Act

(a) interferes with or affects the power of the Court to consult the wishes of the minor in considering the order that ought to be made, or

(b) diminishes the right that a minor now possesses to the exercise of free choice.

RSA 1970 c113 s50

Rules of equity

61 The rules of equity when they do not conflict with this Act prevail in questions relating to the custody and education of minors.

RSA 1970 c113 s51

DOMESTIC RELATIONS ACT

CHAPTER D-37

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